

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:06-cv-00489-W**

| | | |
|---------------------------------------------|---|----------------------------------|
| BAYTREE ASSOCIATES, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| DANTZLER, INC., |) | ORDER ON |
| |) | MOTION TO SHOW CAUSE, |
| |) | MOTION FOR SUMMARY |
| Defendant and Third-Party Plaintiff, |) | JUDGMENT, and |
| v. |) | SETTING PRETRIAL |
| |) | CONFERENCE AND TRIAL DATE |
| |) | |
| ORACLE USA, INC., |) | |
| |) | |
| Third-Party Defendant. |) | |
| |) | |

THIS MATTER is before the Court on the Motions for Summary Judgment filed by Baytree Associates, Inc., (Doc. No. 91) and Oracle USA, Inc. (Doc. No. 95). Also, before the Court, *sua sponte*, is the resolution of Dantzler's violations of the Court's Standing Orders, specifically, its misrepresentations as to the word count contained in its responses to the motions for summary judgment.

For the reasons stated in the Oral Order issued in open court following a hearing on the motions, both motions for summary judgment are granted in part and denied in part. In summary, the following issues remain for trial in this matter: Baytree's Claims against Dantzler for Breach of Contract, Account Stated, and Quantum Meruit; and Dantzler's Claims against Baytree and Oracle for negligent misrepresentation.

As to Dantzler's violations of the Court's Standing Orders, the Court finds such violations were not willfully made for the reasons stated in Dantzler's response to the Court's Show Cause

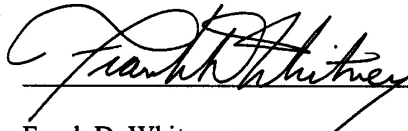
Order (Doc. No. 113). Dantzler's counsel, at the hearing on the motions for summary judgment, presented no further argument or explanation and did not object when the Court proposed a monetary fine. Accordingly, the Court finds good cause and sufficient reason exists to assess counsel for its violations, which were brought to the Court's attention through opposing counsel's motion. Therefore, Dantzler's counsel, and not Dantzler, shall pay \$250 to each of the law firms of opposing counsel (Shumaker, Loop & Kendrick and Robinson, Bradshaw & Hinson) within seven (7) calendar days from the date of this Order. It is the intention of the Court to have this \$500 assessment offset the attorneys' fees incurred by the opposing parties in discovering, addressing, and seeking to remedy Dantzler's violations.

Finally, the last issue remaining before the Court is the scheduling of a pretrial conference and jury selection in this matter. TAKE NOTICE that the pretrial conference in this case shall take place before the undersigned at **9:00 a.m. on Monday, November 10, 2008**, in Courtroom #1 of the Charles R. Jonas Building. The parties shall refer to the Case Management Order (Doc. No. 59) issued in this case for direction on the appropriate pretrial submissions (see 4(c), pp. 9-13). The submission date set forth therein, however, is modified such that the pretrial submissions shall be due by close of business on **Monday, November 3, 2008**. Furthermore, footnote five on page twelve is modified so that the parties need to submit only **one** (not three) complete exhibit notebook to the Court. Counsel shall use the courtroom technology to the fullest extent practicable in its presentation of evidence, including using the ELMO for document exhibits, but a CD-ROM of the pertinent files (as noted in 4(c)(iv)) need not be submitted to the Court until the completion of trial. Jury selection will begin in this matter at **9:00 a.m. on Monday, December 1, 2008**, with opening arguments and trial to begin immediately thereafter.

IT IS THEREFORE ORDERED that Baytree's Motion for Summary Judgment (Doc. No. 91) is GRANTED in part and DENIED in part, Oracle's Motion for Summary Judgment (Doc. No. 95) is GRANTED in part and DENIED in part, and Dantzler shall pay the \$250 each to Shumaker, Loop & Kendrick and Robinson, Bradshaw & Hinson (for a total sum of \$500) within seven (7) calendar days from the date of this Order. The Clerk is DIRECTED to set the pretrial hearing in this matter for Monday, November 10, 2008, and summons a jury for trial to begin Monday, December 1, 2008.

IT IS SO ORDERED.

Signed: October 15, 2008



Frank D. Whitney
United States District Judge

